IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10689 of 2003
with
CIVIL APPLICATION NO.5778 OF 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KAMAL PARK CO-OP HOUSING SOCIETY VIBHAG-2 (SHANTINIKETAN)

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10689 of 2003

MR RS SANJANWALA for Petitioner No. 1

Mr.B.D.Desai, Asst.GOVERNMENT PLEADER for Respondent No. 1-5

MR KG PANDIT for Respondent No. 6

MRS MADHUBEN SHARMA for Respondent No. 7

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 04/08/2004

ORAL JUDGEMENT

With the consent of learned advocates for both sides, main special civil application is taken up with civil application for final disposal.

2. The short facts of the case are that the premises in question was used for running the school and the permission was not granted for said school by the competent authority and it was the case of the petitioner that there was no lawful activity of running the school. When the matter was considered at the admission stage, this court on 14.10.03 after hearing both sides had passed the following order:

"5. In view of the above observations, I am inclined to pass the following order:

(i) Rule.

(ii) By way of interim order, it is directed that the DEO, Surat with the assistance of police, if required, shall take steps for closure of the school at A/97, Kamal Park Coop.Hsg.Society, Vibhag 2 (Shantiniketan), Revenue Survey No.16 of Kapodara, Surat in the name and style of Rajasthan Hindi Vidyalaya or any other name and style at the said place. With a view to ensure effective enforcement of the order, it would be open to the DEO to take assistance of police and to apply seal to the premises, if required. The Police Commissioner, Surat shall provide necessary police force to the DEO for implementation of the order of this court.

(iii) The DEO shall also consider and within a period of four weeks from today, after examining the record, shall pass appropriate order for admission and/or absorption of students who were studying in the said school until there was a valid permission in operation. After such orders are passed, he shall also take steps for ensuring that such students are admitted in other schools so that the education of such students may not suffer.

It is clarified that even if the premises is sealed by the DEO with the assistance of police, the rights pertaining to the property

where the school is going on, namely, A/97, Kamal Park Coop.Hsg.Society, Vibhag 2 (Shantiniketan), Revenue Survey No.16 of Kapodara, Surat shall not remain prejudiced in any manner and it would be open to respective concerned persons having interest or right over the property to continue to occupy and it will also be open to them to move this court for removal of the seal and after the activity of running the school is stopped."

3. Thereafter some time was taken by the DEO to report compliance and ultimately seals were applied over the premises in question with a view to see that the interim order is given full effect and the illegalities may not be perpetuated. After the application of seal the activity of running the school was closed. This court in its above referred earlier had observed that it will be open to the respective concerned person having interest or right over the property to continue to occupy and it will also be open to them to move this court for removal of seal, after the activity of running the school is stopped. In the CA No.5778/04 the original respondent No.7 in the main petition has declared before the court that the applicant is ready to give assurance to the original petitioner that he will not operate the school at the premises in question i.e. A/97, Kamal Park Coop.Hsg.Society and he will never apply for permission to operate the school at the above mentioned premises. The applicant by raising the said contention has prayed to direct the opponent Nos 2 and 5 to remove the seals applied over the premises in question.

3. Heard Mr.Sanjanwala for the petitioner and Mr.Desai, Ld.AGP for the respondent authorities and Ms.Madhuben Sharma for original respondent No.7.

4. There is no dispute on the point that the premises in question is now not being used for running the school. The petitioner is also ready to give assurance to the court that unless the prior permission is granted by the competent authority the same shall not be used for running the school or for opening the school. Mr.Sanjanwala for the petitioner however submitted that as the petitioner society, who is the real owner of the property, should be allowed to raise the objection before the competent authority as and when such permission is applied for by any person for utilising the premises for running the school.

5. Under the above circumstances, I find that the

following directions shall meet with the ends of justice:

(i) The respondent No.7 shall file undertaking before this court within a period of one week from today declaring that the premises in question shall not be used for running the school or opening the school unless prior permission is granted by the competent authority and the copy of the same is made available to the petitioner.

(ii) It would be open to the respondent No.7 to apply to the authority for opening the school at the premises in question after giving prior intimation in writing to the petitioner.

(iii) It would be open to the petitioner to raise the objection in accordance with law in case the original respondent No.7 is desirous to utilise the premises for running the school and such an objection shall be considered by the competent authority in accordance with law.

(iv) After the undertaking is filed and the copy of the same is served to the Govt.Pleader and the DEO, the respondent Nos 2 and 5 shall remove the seals over the premises in question within three days from such intimation and after removal of the seals the petitioner shall be at liberty to utilise the premises in accordance with law except for running or opening the school as indicated hereinabove.

6. The petition as well as the civil application are allowed in terms of aforesaid directions. Rule is made partly absolute. There shall be no costs.

4.8.04 (JAYANT PATEL,J)